Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 1997

JOHN R. HAEGER,

Petitioner,

vs.

DEBRA M. SULLIVAN, *et al*

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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58 pp

QUESTIONS PRESENTED

1. Whether a United States Court of Appeals has sanctioned departure by a United States District Court so far from the accepted and usual course of proceedings so as to call for exercise of this Court's supervisory power ?

2. Whether a United States Court of Appeal has, itself, so far departed from the accepted and usual course of proceedings as to call for exercise of this Court's supervisory power

3. Whether the Eleventh Circuit, after this Court struck down a heightened pleading standard in § 1983 cases (*Leatherman v. Tarrant County Narcotics Unit*), has replaced a heightened pleading standard with overly stringent alternative practices to control unmeritorious claims such that legitimate claimants are denied a day in court ?

4. Whether prosecutorial immunity encompasses acts in violation of a Georgia statute which is integral to Georgia's scheme to assure that criminal defendants are provided Sixth Amendment notice of charges raised in amended accusations ?

5. Whether prosecutorial immunity encompasses failure by a supervising prosecuting attorney to train and to cause his supervisees to comply with Georgia statutes integral to Georgia's scheme to assure that criminal defendants are provided Sixth Amendment notice of charges ?

6. Whether Plaintiff has failed to state a claim entitling him to relief under 42 U.S.C. § 1983 ?

7. Whether Plaintiff has failed to establish jurisdiction of the District Court for a claim under 42 U.S.C. § 1983?

LIST OF PARTIES

JOHN R. HAEGER, JR.
Ms. DEBRA M. SULLIVAN, Assistant DeKalb County Solicitor
Mr. URAL D. GLANVILLE, former Assistant DeKalb County Solicitor
Mr. RALPH T. BOWDEN, Jr., DeKalb County Solicitor
DEKALB COUNTY, GEORGIA
Mr. KENNETH CHEEK, Clerk of DeKalb County State Court
Honorable JACK M. McLAUGHLIN, DeKalb State Court
Mr. JONATHAN A. WEINTRAUB, DeKalb County Attorney
Ms. MELINDA BRULEY WHITE, Assistant DeKalb County Attorney

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OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A) is unpublished. The Order of the District Court (Appendix B) is unpublished as is the opinion to which it refers. The District Court's opinion in an unrelated case (Appendix C) which was used as justification for dismissing this Complaint is unpublished. The Judgment of the District Court (Appendix D) is unpublished. The opinion of the Court of Appeals (Appendix E) on Plaintiff's Petition for Rehearing and Suggestion of Rehearing En Banc is to be reported. The Opinion of the Court dismissing a subsequent Complaint alleging deprivation of notice and hearing equal protection of the law and containing the court's personal opinions as to the instant Complaint is at Appendix F.

STATEMENT OF JURISDICTION

The denial of rehearing by the Court of Appeals was entered on September 30, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The following items and extracts upon which petitioner relies are reproduced in Appendix E:

Section 1 of Amendment XIV to the U.S. Constitution

Amendment VI to the U. S. Constitution

O.C.G.A. 17-7-71(f) Amended Accusations - requirement to serve defendant

O.C.G.A. § 50-18-70 *et seq* Georgia Open Records Act

PROFESSIONAL STANDARDS OF THE STATE BAR OF GEORGIA

4	Bar to fraudulent professional conduct
45(b)	Bar to knowingly making false statement
46	Mandate to reveal what is required by law

STATEMENT OF THE CASE

The instant Complaint seeks review of the manner in which Plaintiff was accorded due process of law and, in particular, the manner in which notice of a charge was withheld until minutes before a jury trial. No review or modification is sought of a state court judgment.

STATE COURT PROCEEDING

1) **Two Charges leveled against Plaintiff; plaintiff is notified of only one**: In November, 1993, Plaintiff was accused of simple battery. Plaintiff requested a jury trial.

2) **Flow of Notice to Defendant**: Georgia statutes contain a scheme for providing defendants with notice of amended accusations and of additional charges contained therein. Under that scheme, provision of notice of an amended accusation to a defendant begins in the Solicitor's office, flows to the Clerk, thence to the Judge (to determine whether a second arraignment is required), and, (in DeKalb County) in some manner yet undiscovered (due to obstruction of pre-filing inquiry through Open Records Act violations by the County Attorney and his Assistant) to the DeKalb County computer which runs the INSLAW software package to generate paper notices for the Clerk which are mailed to defendants.

3) **Two Solicitors Amended Accusation**: In connection with Plaintiff's pre-filing inquiry, the second Assistant Solicitor Sullivan claimed the first Assistant Solicitor first amended the accusation against Plaintiff in November 1994 prior to a January 1995 jury trial date and that the second Assistant Solicitor later amended it once more before the trial date.

4) **Failure to Notify Clerk**: No amended accusation document exists in the Clerk's documentary file nor does any annotation of such amendment appear in the Clerk's computerized docket.

5) **Failure to Notify**: As a result of two Assistant Solicitors' violations of O.C.G.A. § 17-7-71(f), plaintiff was deprived of notice of the new charge contained in either amendment.

6) **Failure Known to Solicitor**: The Second Assistant Solicitor appeared to prosecute the case and was aware of the deprivation of notice before she entered the courtroom on the day of the trial.

7) **Deprivation of Timely Notice**: Plaintiff was notified by the second Assistant Solicitor of the new charge immediately after she entered the courtroom

8) **Judge Placed on Notice of Lack of Arraignment**: The Judge was notified by Plaintiff's attorney that Plaintiff had not been arraigned on the new charge.

9) **Solicitor Misleads Judge**: Sullivan (incorrectly) told the judge that Plaintiff had been arraigned on the new charge and that the second amendment was so minor as to not merit arraignment.

10) **Plaintiff Placed at Risk**: Without resort to documentary evidence of whether or not Plaintiff had ever been arraigned on the charge, Judge McLaughlin decided that no arraignment was necessary and that the trial on both charges would proceed.

11) **Plaintiff acquiesces to Judge/Solicitor team**: The Judge ruled that a trial on all charges would take place. Hampered by his lack of preparation to defend against yet another specious charge, and denied any time to prepare to defend against the new charge, Plaintiff acquiesced to a coerced plea bargain.

12) **Plea Bargain Offered**: With Plaintiff thus at risk, Sullivan offered a plea bargain wherein the newly divulged charge would be dropped if Plaintiff would plead guilty to the original charge.

13) **Plea Bargain Offer Accepted**: Plaintiff accepted Sullivan's offer.

14) **Computer System Maintains State Court Records**: A computer software system sold by INSLAW Corporation is operated by DeKalb County and maintains the computerized docket for the Clerk of State Court. That system also generates notices to defendants.

15) **Obstructing Pre-filing Inquiry-- Minutes of Data Processing Committee**: In response to Plaintiff's Open Records Act pre-filing inquiries to a holder of records, an Assistant County Attorney interposed herself and denied permission to inspect minutes of meetings of the Data Processing Advisory Committee.

16) **Obstructing Pre-filing Inquiry--Computer Operating Procedures**: Again the Assistant County Attorney interposed herself and denied permission to inspect computer system operating procedures.

17) **Obstructing Pre-filing Inquiry-- State Contract**: Again the Assistant County Attorney refused to permit inspection, this time of a state contract

18) **Obstructing Pre-filing Inquiry-- Continued**: Further denials of permission to inspect by the County Attorney and his Assistant ensued.

PETITIONER'S ATTEMPT TO OBTAIN RELIEF

Plaintiff filed suit in U.S. District court alleging Federal Causes of action including:

--Deprivation of notice of a criminal charge

--Failure to train

--Obstruction of Plaintiff's pre-filing inquiries by the County Attorney and his Assistant thru violations of the Georgia Open Records Act (See Appendix G).

Plaintiff also alleged supplemental state claims:

Plaintiff sought declaratory judgment that the practices complained of violated Georgia law,

Plaintiff sought prospective relief to cause improvements in the manner in which DeKalb State Court records are maintained and the manner in which due process is accorded defendants.

Plaintiff's suit was dismissed by the District Court with an opinion which failed to enunciate grounds for dismissal other than by general reference to "reasons well stated in Defendants' brief."

BASIS FOR FEDERAL JURISDICTION IN U.S. DISTRICT COURT

28 U. S. C. § 1331
28 U. S. C. § 2201
28 U. S. C. § 1367

REASONS FOR GRANTING THIS PETITION

There are four reasons for granting this petition:

I. **Departure by District Court Sanctioned by Appeal Court:** A United States Court of Appeal has sanctioned departure by a United States District Court so far from the accepted and usual course of proceedings so as to call for exercise of this Court's supervisory power

II. **Departure by Appeal Court:** A United States Court of Appeal has, itself, so far departed from the accepted and usual course of proceedings as to call for exercise of this Court's supervisory power

III. **Clarify *Leatherman:*** This case offers this Court a clean-cut opportunity to clarify and reiterate the guidance in provided in *Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517, when this Court struck down a heightened pleading standard for § 1983 complaints and recommended that " . . . federal courts and litigants rely on summary judgment and **control of discovery** to weed out unmeritorious claims . . . ." It appears that the Eleventh Circuit approach to "control of discovery" is insufficiently selective to retain meritorious cases while weeding out unmeritorious ones.

IV. **Reiterate *Conley:*** In conjunction with *Leatherman*, this case offers this Court the opportunity to reiterate the principles for screening unmeritorious cases promulgated by this Court in *Conley v. Gibson*, wherein a plaintiff's complaint is analyzed based on the plaintiff's averments as stated by the plaintiff, not as recast by the defendants.

DISCUSSION OF REASONS FOR GRANTING THIS PETITION

19) **Common Sense--Deprivation of Notice Averred**: *United States v. Zibilich*, 542 F.2d 259, 260 (5th Cir. 1976) requires that the Court "use common sense in interpreting the frequently diffuse pleadings of *pro se* defendants." Here Plaintiff has averred that he was deprived of notice of a charge that (according to a pre-filing inquiry letter from one of the Assistant Solicitors who violated Georgia statute by failing to provide the Clerk with a copy of the amended accusation) was leveled against him two months before the jury trial date. And at this stage, Plaintiff's averments must be assumed to be true, *Conley*.

20) Defendants controlled the prosecution, the bench, the record keeping system, the authority for amending accusations and the mechanism for providing notice of those amendments through the Clerk to the Plaintiff. *Zibilich* and common sense would suggest that in the State Court proceeding described in the Complaint, <u>some</u> state actor caused the deprivation--either through direct action or inaction or through failure to establish and impose policies and procedures.

21) If *Zibilich* is to have meaning and effect in this Circuit, if common sense is to prevail, this Court should acknowledge the clear denial of Plaintiff's Sixth Amendment right to notice and acknowledge that Plaintiff has both established subject matter jurisdiction and has presented a claim entitling him to relief.

DISTRICT COURT DEPARTURE SANCTIONED BY COURT OF APPEALS

22) In departing from the accepted and usual course of proceedings, the District Court did not even issue an substantive opinion (See Appendix B), but merely relied on the arguments put forth by the Defendants.

Adopting Defendants Brief as a District Court Opinion

23) In *Chudasama v. Mazda Motor Corp*, 95-88896, 95-9021 (11th Cir. Sept 15, 1997), the Court of Appeals for the Eleventh Circuit chastised Judge J. Robert Elliott of the Middle District of Georgia for, among other things, allowing a party to write his opinion. In the instant case, the District Court here made no attempt at all to draft an opinion, but merely adopted Defendants' briefs as its own opinion with the words, "the Court agrees with defendants argument that the claim should be dismissed, for the reasons averred by defendants . . ."

24) In departing from the accepted and usual course of proceedings, the District Court relied on Defendants' recasting of Plaintiff's Complaint into more easily-defensible averments rather than analyzing Plaintiff's complaints and using assumptions prescribed in *Conley v. Gibson*.

25) The only opinion provided by the District Court in support of its judgment was an old opinion she had written dismissing Plaintiff's previous Complaint--one that notably did NOT allege deprivation of notice. Plaintiff's previous claims included violations of Georgia statutes, Uniform Rules of Superior Court, Code of Judicial Conduct, Standards of Discipline of the Georgia Bar, and Federal mail fraud in attempting to collect money already paid. That opinion relies heavily on a misstatement of the Rooker-Feldman doctrine which expands the doctrine from "inextriably intertwined with a state court judgment," to "inextricably intertwined with a state court proceeding."

The District Court's expanded doctrine provides grounds for denial of Federal jurisdiction over for any claim of deprivation of due process of law that the Court doesn't want to hear. This unjustified expansion was affirmed by the Eleventh Circuit Court of Appeals.

26) The defendants named in this case were deeply involved in the manner in which due process was accorded in this case, even to the County which A) operated the Clerk's computer system and should have implemented computer-system controls so that the Clerk might exercise control over who made entries to his computerized records and B) should have produced the physical notice triggered by actions of the two Assistant Solicitors.

27) In addition, the County Attorney and his Assistant County Attorney, upon realizing Plaintiff's understanding of the procedural problems in the way the County and the Clerk operated the computer system which is intended to provide Sixth Amendment notice, went so far as to violate (in writing) the Georgia Open Records Act in their efforts to cover up the failures and the deprivation that Plaintiff alleges.

Failure to Address Claims Stated by Plaintiff

28) The District court accepted Defendants' averments and rejected Plaintiff's arguments that he could show a different state of facts if discovery were permitted. As this Court held in *Conley v. Gibson*, 355 U.S. 41 at 45, 78 S.Ct. 99 at 102, "the accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

DEPARTURE BY APPEAL COURT

29) *Fortner v. Thomas*, 983 F.2d 1024 (11th Cir. 1993) establishes the premise that an appeal at this stage shall be reviewed *de novo*. In *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, this Court held that "the accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." The Appeal Court's opinion is

fraught with misreadings of the Complaint and assumptions of fact and law favoring Defendants. A single day in court, even an enforced settlement conference supervised by a magistrate, would have clarified these misunderstandings.

30) The Appeal Court's *de novo* opinion does not reference any argument raised by Defendants in their pleadings nor the opinion of the District Court. It is a true *de novo* review, denying Plaintiff his conventional opportunity to respond in a Reply Brief to new arguments posed not by the Defendants, but by a Defendants' advocate within the Appeal Court.

31) **Plaintiff Averment Ignored--Provision of Notice is not within Prosecutorial Discretion**: The Appeal Court's opinion that provision of notice is within prosecutorial discretion overlooks Plaintiff's averment R1-8 ¶ 40, 43, that the Assistant Solicitors twice violated a non-discretionary step in Georgia's statutory scheme to assure defendants of notice of new charges raised in amended accusations (O.C.G.A. § 17-7-71(f)) by failing to notify the Clerk of State Court of their respective amended accusations.

32) **Misread Complaint--Inaccurate Computer Records**: At page 2a, the Appeal Court's opinion states that the deprivation of notice arose from procedural deficiencies stemming in large part from inaccurate computerized court records. This is incorrect (R4-78). The "procedural deficiencies" stemmed in large part from failure (twice) by the two Assistant Solicitors to comply with O.C.G.A. 17-7-71(f) and the Judge's unquestioning acceptance of the second Assistant Solicitor's false averment that Plaintiff had been arraigned on the new charge when in fact he had not.

33) **Impossible to Overturn Conviction not Obtained**: At Page 4a, the Appeal Court's opinion argues that "Haeger does not contend that his criminal conviction has been overturned and indeed implies that it has not." Since no conviction or plea was obtained on the charge in question, Plaintiff cannot possibly contend that the criminal conviction on the undisclosed charge in question has been overturned. It is impossible to overturn a conviction or plea that was not obtained. As soon as the undisclosed charge had served its purpose, it was dropped by the second Assistant Solicitor, R1-9, ¶ 52

34) On page 4a, the Appeal Court relies on *Heck v Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994) to support a finding that Plaintiff's cause of action has not accrued and therefore could be dismissed without prejudice. This line of argument was not even suggested by the Defendants and Plaintiff had no opportunity to respond in a Reply Brief.

35) At 2374, the *Heck* Court held " . . . a § 1983 action attributable to an unconstitutional conviction does not accrue until the conviction or sentence has been invalidated." In this case, there was no conviction or sentence on the charge.

36) In the absence of conviction or sentence, there is no possibility that Plaintiff will ever have his conviction overturned, expunged, declared invalid, or called into question because no conviction was obtained. And that impossibility precludes the applicability of *Heck*.

37) **Prospective Relief Sought to Impose Policy to Comply with Georgia Statutes so as to Accord Notice**: On page 5a, the Appeal Court's opinion relies on *City of Los Angeles v. Lyons*, 461 U.S. 95, 111, 103 S.Ct.1660, 75 L.Ed.2d 675, as justification for asserting Plaintiff's lack of standing. This line of argument, too, was not even suggested by Defendants and Plaintiff had not opportunity to respond to it in a Reply Brief.. *City of Los Angeles* denied prospective relief to a Plaintiff who suffered a choke-hold administered by police who disobeyed instructions. *Los Angeles* addresses deprivations based on its' officers' violations of instructions, policy or procedures.

38) The instant case does not yet possess a nucleus of discovered fact on which to address violation of instructions, policy, or procedures. Defendants will have a full opportunity to demonstrate that Plaintiff's deprivation of notice was based on violation of such instructions, policies, and procedures in discovery.

39) *Los Angeles* is relevant to unauthorized violations of policy and procedure. But it is irrelevant to the systematic policy and procedural failures alleged by Plaintiff.

40) The basis for and the target of prospective relief sought by Plaintiff is not violation of procedures by individuals, but failures by both by the Solicitor and the Clerk to establish and impose procedures to assure accordance of due process of law through provision of notice and through maintenance of record systems that accurately reflect the manner of accordance of due process of law.

41) **Policy/Procedures--Solicitor's Notice Procedures**: The Solicitor and one Assistant have already admitted in writing to absence of formal training ("on-the-job training" in the Assistant's written response to Plaintiff's pre-filing inquiry, explaining the absence of written procedures; "non-existent" in the Solicitor's written response to Plaintiff's pre-filing inquiry) as to procedures for handling amended accusations.

42) **Misreading Complaint--No Direct Allegations Against Clerk ?**: The Appeal Court's opinion asserts at page 5a that Plaintiff made no direct allegations against Cheek (the Clerk). Plaintiff's Complaint included four pages of description of record keeping anomalies within the purview of the Clerk, R4-9-13 ¶¶ 94, 95, 97, 100A, 100B, 100C, 100D, 100E, 100F, 100G.

43) **Certified Copies of Clerk's Files are Authoritative**: The Clerk's files can be used as evidence in court without supporting testimony. They should contain an accurate and complete record of the manner in which due process is accorded defendants. The Clerk has no duty to ferret out documents. But if a document is filed, it must be retained. If an entry is made to the computerized docket, a supporting original document must remain on file with the Clerk. If entries can be made without supporting documents OR if documents can be removed from the Clerk's files, then the State can win in the Clerk's record what it could not win in open court. Accurate record-keeping of the manner of according due process and the results of judicial determinations is part and parcel of due process of law.

44) **Access Control Policy--Who can make entries to the Clerk's Docket ?** Facts to be sought in discovery will indicate whether the DeKalb County Information Systems Department provided Cheek with means to control when, from where, and under what conditions which individuals are allowed to make entries to the Clerk's computerized records OR whether

the County, by procuring and/or installing an inadequate computer system, deprived Cheek of the ability to effectively control the ability to make entries to records over which he has statutory cognizance. Only discovery and a jury can determine whether these policies were adequate for the purpose and whether they were closely enough related to Plaintiff's ultimate injury.

45) **Access Control Policy--Who can remove documents from the Clerk's Document files ?** The Clerk's employees report that the Clerk has procedures to prevent removal of documents submitted to his documentary files. However documents are clearly missing from the Clerk's file on Plaintiff's case. Discovery may permit inquiry into whether the Clerk's procedures are adequate to prevent removal of documents that report on the manner in which due process was accorded. Only a jury can determine whether these policies were adequate for the purpose and whether they were closely enough related to Plaintiff's ultimate injury.

46) **Misreading Complaint--No Direct Allegations Against DeKalb County ?** The Appeal Court's opinion asserts that Plaintiff failed to identify any policy or custom of DeKalb County responsible for alleged deprivations. See R4-11-13, ¶ 99 - 100G. Systems of the scope of the INSLAW software package are rarely selected, installed, activated, or operated without approval by a policy maker. The Code of DeKalb County provides for a Data Processing Advisory Committee to "Recommend priorities for new and expanded data processing services to the data center director for presentation to the board of commissioners." The County will have ample opportunity during discovery, if permitted, to demonstrate that this system was selected, installed, activated, and operated without resort to approval by any County policy makers.

47) It is highly likely that Plaintiff will be able to prove that the INSLAW system was approved for activation by a policy action of the DeKalb County Board of Commissioners as recommended by the Data Processing Advisory Committee. See R4-11-13, ¶ 99 - 100G, containing claims referring to the INSLAW system operated by DeKalb County. Additionally, the Solicitor and the Clerk are DeKalb County officers and policy-makers. It is quite likely that, with discovery, Plaintiff can prove that their actions are those of the County (*Hamilton v. Cannon*, 11th Cir. 94-9098, 94-9158, April 19, 1996))

48) **Withholding Notice--Not within Prosecutorial Discretion**: At page 4a, the Appeal Court's opinion holds that prosecutors are entitled to absolute immunity for discretionary prosecutorial acts, relying on *Imbler v. Pachtman*, 424 U.S. 409, 431, 96 S.Ct. 984, 995, 47 L.Ed.2d 128 (1976). Both Assistant Solicitors were (at different times) directly involved in prosecution of this case. Both had a statutory duty to notify the Clerk of the amended accusation they made. Neither the Sixth Amendment to the U. S. Constitution nor O.C.G.A. § 17-7-71(f) provides discretion to the prosecutor as to whether or not to notify the defendant of the amended accusation and the new charge.

49) **No Prosecutorial Acts Performed by the Solicitor--Only Supervisory Acts**: The Appeal Court wishes to treat the Solicitor as an active prosecutor so as to provide him with prosecutorial immunity. The Solicitor is not named in the Complaint in his capacity as a prosecutor, but in his supervisory capacity with obligations to train, to establish and impose procedures over his supervisees, Assistant DeKalb County Solicitors. R1-17 ¶ 85

50) Those duties and obligations are totally separate from any prosecutorial functions he may have performed in this case. If the Solicitor were to claim prosecutorial functions in this case, he, too, would be a participant to falsification of the Clerk's file (a public record), a felony offense. The Solicitor's only discretionary acts complained of by Plaintiff are those of a supervisory attorney and a DeKalb County public officer.

51) **Dropping Defendant Haeger**: Defendant Haeger was not served, did not waive service, and did not acknowledge jurisdiction of the District Court. Hence she has not been joined as a party to this case and neither the District nor the Appeal Court (at page 5a) has jurisdiction to dismiss her.

52) **Failure to train**: At page 4a, the Appeal Court minimizes Plaintiff's claims of the Solicitor's failure to train and assumes that the Plaintiff can prove no set of facts that the failures of any of the Defendants accused of failure to train will fall within the "deliberate indifference" and "closely related" standards of *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390-91, 109 S.Ct. 1197, 1205-06, 103 L.Ed.2d 412 (1989). At this stage of pleading, any assumption must be that Plaintiff may be able to show that

these defendants have displayed deliberate indifference and that their omissions may be closely related to the ultimate injury, *Conley*.

53) **Affirm on any Ground Asserted in Pleadings**: And finally, the Appeal Court asserts its right to affirm on any ground (asserted in pleadings), *Young v. Commissioner of Internal Revenue*, 926 F.2d 1083, 1090 (11th Cir. 1991). The *Young* court, however, offers a justification for affirming an argument offered by one of the parties. It does not attempt to justify raising arguments not raised by either party.

54) The Appeal Court's opinion thus deprived Plaintiff of the opportunity to respond to new arguments through a Reply brief.

55) The Appeals court attempts to minimize Plaintiff's pre-filing inquiry into the manner of evasion of Georgia's scheme for provision of notice of charges contained in amended accusations. The Appeal Court characterized Plaintiff's pre-filing inquiries as merely "requests for general information regarding the maintenance and operation of the computer records system." The Appeal Court's misunderstanding is not surprising in light of its heavy reliance on Defendants' averments rather than Plaintiff's averments in performing its *Conley* test.

56) Plaintiff's initial pre-filing inquiry asked for documents that would show a policy decision to adopt and operate the INSLAW system. Subsequent requests called for "documents concerning the INSLAW system as used to produce arraignment calendars." R1-1 at p 10. Only when an Assistant County Attorney refused permission to inspect those computer system documents on the grounds that the State contract gave the software vendor (INSLAW) the right to bar inspection under the Open Records Act, did Plaintiff ask to inspect "general information," a copy of the State Contract. The same Assistant County Attorney refused permission to inspect the State contract on the grounds that its contents were confidential.

57) By the nature of Plaintiff's request concerning production of "arraignment calendars," any County Attorney with a minimal awareness of the Constitutional requirement of notice of criminal charges would have been aware that the request was part of an informal inquiry into the manner in

which some DeKalb County defendant had been accorded due process of law. Apparently this County Attorney and his Assistant were not so aware.

CONCLUSION

This complaint has to do with a prosecutor's violation of clearly established law, violation of a criminal procedure statute that is integral to Georgia's scheme to assure that defendants are notified of charges contained in amended accusations.

Justice is being rationed: Pro Bono Publico is a quarterly publication of the Pro Bono Committee of the Savannah Bar Association and the Private Bar Project of the Savannah Office of Georgia Legal Services. It carries under its banner a quote from Judge Learned Hand--"**No democracy will survive if it rations justice**." This Court is one of limited resources and must ration them. But this Court should ration it resources in such a way as to assure that the lower courts apply the law as it is written and as it is interpreted so as to minimize the need to resort to the resources of this Court.

These Federal Courts have made no attempt to incorporate bona fide rules of law in their opinions precluding discovery: Having been thrice been denied discovery based not on Plaintiff's Complaint, but on defendants' recast version of Plaintiff's Complaint, and on increasingly specious grounds; and having seen those specious arguments affirmed on Appeal in the first instance (*certiorari* denied), and in the second instance, discarded in their entirety and replaced with equally specious arguments raised not by Defendants, but by a Defendants' advocate within the Court of Appeals, Plaintiff is coming to believe that, at least as to him, and possibly as to a class of citizens denied due process in domestic matters, that justice is being denied through the manner of rationing.

State Court Enjoys De Facto Exemption from Federal Judicial Oversight of the Manner of According Due Process: The effect of such rationing is to demonstrate to state actors that there is no effective federal judicial review of their actions at any level. And, like absolute power, absolute immunity from review corrupts absolutely. The abuses Plaintiff has observed in his own and other cases show widespread and systematic

deprivation of due process of law, all in the name of "doing what I think is right," in the words of one Georgia Superior Court judge.

"Discovery control" replaces the heightened pleading requirement: This Court, in *Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517, struck down a heightened pleading standard applied by the Fifth Circuit in § 1983 cases as incompatible with F.R.C.P. 8(a)(2). This Court suggested at 168 that ". . . federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later." What Plaintiff has experienced seems to reflect "control" of discovery without regard to the merit of the claim.

Opportunity to clarify *Leatherman*. If this Court finds that its guidance in *Leatherman* has been misconstrued or is being misapplied, this case offers a clean-cut opportunity to clarify this Court's support for due process of law for all citizens.

Potential systematic deprivation of notice: The violations of due process in this single case demonstrate that the DeKalb County State Court system, in pursuit of its own goals, has drastically deviated from a rule of law. Failure to perform the same statutory procedure twice in the same case may indicate systematic violations within the Solicitor's office or a failure by the Solicitor to train his staff.

Denial will signal freedom to deny notice: If *certiorari* is denied in this instance of clear and flagrant deprivation of notice in a criminal law context, it will be a signal that the DeKalb County Solicitor's office may continue to violate clearly established Georgia statutes so as to deny defendants notice of criminal charges. Even if unpublished, this case will stand in the Eleventh Circuit for the principle that defendants are not entitled to notice of a charge added in an amended accusation.

Deprivation of Notice in a Criminal Case Is a "Mere Ramification of Divorce"

The pendulum has swung to such an extreme that a Plaintiff who points out the egregious and systematic manner of this deprivation can be

dismissed (legally and figuratively) by a Federal judge as merely expressing "displeasure with the ramifications of divorce . . ." (Appendix F, Sept 10, 1997, 1-97-CV-1862-JEC)) The District Court in that third case expressed her personal opinion that the violations of clearly established Georgia criminal and civil procedure statutes resulting, in this instance, in deprivation of notice of a criminal charge, were merely "ramifications of divorce" and do not describe deprivations of Constitutional liberty or property interests to which Plaintiff has an entitlement or a claim for relief.

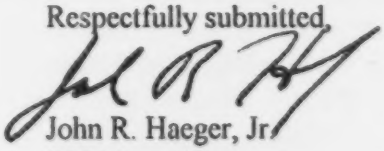
Thus a judge of a Federal District Court, with daily exposure to federal rulings and judicial thinking, holds a good-faith belief that the tenor of Supreme and Appeals Court opinions is that the deprivations experienced by Plaintiff are merely "ramifications of divorce." If, in light of the Appeals Court's and District Court's actions grounded in good-faith beliefs, this Court denies *certiorari* to hear this case, it will indicate to the lower federal courts (as well as the DeKalb County Solicitor and to the DeKalb County State Court) that DeKalb County is free to deny notice whenever it sees fit.

Plaintiff seeks review of the District Court's and the Appeals Courts legal conclusions.

Most importantly, Plaintiff seeks to proceed in this case to discovery. And, there appears to be much to be brought into evidence here (quite a bit of it already possessed by Plaintiff).

In this process, however, Plaintiff offers to this Court the opportunity to return this case to the lower courts to apply simple Constitutional law, free from such specious notions as denial of Plaintiff's *Conley* right to have his complaint reviewed as it is written by the Plaintiff, not as recast by Defendants.

Respectfully submitted,



John R. Haeger, Jr.
5464 Laurel Lane
Lilburn, Georgia 30047
770 717 1885

December 29, 1997

Appendix A

APPENDICES

APPENDIX A--ELEVENTH CIRCUIT JUDGMENT
APRIL 21, 1997

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 96-8928
Non-Argument Calendar

D. C. Docket No. 1:96-CV-214-JEC

JOHN R. HAEGER,

Plaintiff-Appellant,

versus

Debra M. SULLIVAN, Assistant DeKalb County Solicitor; URAL D. GLANVILLE, former Assistant DeKalb County Solicitor; RALPH T. BOWDEN, JR., DEKALB COUNTY SOLICITOR; DEKALB COUNTY, GEORGIA; TERESSA F. HAEGER, Dr., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(April 21, 1997)

Appendix A

Before HATCHETT, Chief Judge, EDMONDSON, and BIRCH, Circuit Judges.

PER CURIAM:

John R. Haeger appeals the district court's dismissal of his civil rights complaint filed pursuant to 42 U.S.C. § 1983. We AFFIRM.

I. BACKGROUND

Haeger, proceeding pro se, filed a complaint in district court naming as defendants: DeKalb County, Georgia; the Honorable Jack McLaughlin, a state court judge; Ralph T. Bowden, DeKalb County Solicitor; Debra M. Sullivan, assistant solicitor; Ural. D. Glanville, a former assistant solicitor; Jonathan A. Weintraub, DeKalb County Attorney; Melinda B. White, assistant attorney; Kenneth Cheek, Clerk of the DeKalb County State Court; and Teressa F. Haeger, Haeger's ex-wife. R1-1; R1-4.

Haeger's complaint described events leading to his conviction for criminal trespass and alleged that he had not been notified or arraigned on amended criminal charges. Id. These procedural deficiencies stemmed in large part, he alleged, from inaccurate computerized records. See R1-1 at 5-12. Haeger also alleged that certain defendants had denied his post-conviction requests for general information regarding the maintenance and operation of the computer records system. R1-1 at 10.

Haeger's complaint listed four federal causes of action, all alleging violations of the Due Process Clause. R1-1 at 12-19; R1-4 at 3-7. In the first, he accused defendants Glanville and Sullivan, assistant solicitors, of failing to take steps necessary to provide him with notice of amended charges they had lodged against him. R1-1 at 13-15; R1-4 at 3-4. Haeger also accused Judge McLaughlin of "placing him at risk" on the amended charges even though Haeger had not been notified or arraigned. R1-1 at 15-16; R1-4 at 5-6. Judge McLaughlin, according to Haeger, "negligently accepted" Sullivan's representation that Haeger had been arraigned and that the new charges did not materially differ from the original. R1-1 at 16; R1-4 at 5. Haeger's's third federal cause of action accused Bowden, the DeKalb County Solicitor, of failing properly to train defendants Glanville and Sullivan "in

how to comply with and accord defendants due process of law." R1-4 at 6. Finally, in his fourth federal claim, Haeger alleged a violation of his "[g]eneralized expectation of due process." R1-1 at 18. According to Haeger, he had "a reasonable objective expectation that the DeKalb County government taken as a whole" would provide him with due process of law. R1-1 at 18-19.

Haeger's complaint also states seven "supplemental" causes of action derived from state law. R1-1 at 19-30; R1-4 at 7-15. These included fraud, falsification of public records, negligent operation of the computer records system and related charges, and violation of Georgia's Open Records Act. The Open-Records-Act claim stemmed from Haeger's attempts to obtain general information regarding operation of the computer records system from county officials. R1-1 at 26-28; R1-4 at 13-15. Haeger sought monetary damages as well as injunctive relief. R1-1 at 30-36; R1-4 at 15-17.

The record shows no indication that Bowden, Weintraub, or Teressa Haeger were serves with process. Bowden and Weintraub, however, joined by the remaining defendants, filed a motion to dismiss for failure to state a claim. R1-5. The district court dismissed Haeger's complaint. R1-17.

II. DISCUSSION

"This court must review de novo a district court's order dismissing a complaint, accepting all allegations in the complaint as true and construing the facts in a light favorable to the plaintiff." Fortner v. Thomas, 983 F.2d 1024, 1027 (11th Cir. 1993). As an initial matter, we reject Haeger's attempt to recast his state-law claims regarding negligent record keeping and Georgia's Open Records Act into allegations asserting constitutional violations. The rules requiring liberal construction of pro se complaints should not be applied "in such a manner that the plaintiff's pleadings themselves become irrelevant . . ." United States ex rel. Simmons v. Zibilich, 542 F.2d 259,260 (5th Cir. 1976). Haeger's complaint contained no federal claims similar to those raised here. Moreover, his claims regarding negligently maintained records and public access were clearly labeled as state law claims. Accordingly, the district court did not err in failing to construe Haeger's complaint as he suggests.

In Heck v. Humphrey, 512 U.S. 477 , 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), the Supreme Court stated: "[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, **or for other harm caused by actions whose unlawfulness would render a conviction or**

sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ or habeas corpus, 28 U.S.C. § 2254." 114 S.Ct. at 2372 (emphasis added; footnote omitted). Here, Haeger does not contend that his criminal conviction has been overturned and indeed implies that it has not been. See generally R1-1. Moreover, his due process claims, if successful, clearly would render his conviction invalid. Accordingly, insofar as Haeger seeks damages for violations of his due process rights, his cause of action has not accrued and his complaint could have been dismissed without prejudice. Heck, 114 S.Ct. At 2374. As demonstrated by the discussion below, however, dismissal with prejudice was also proper in this case.

Judicial officers are absolutely immune from liability for acts performed in their judicial capacity, even if performed maliciously. Harris v. Deveaux, 780 F.2d 911, 914 (11th Cir. 1986). Only if a judge acts "in the clear absence of jurisdiction"', will he be ineligible for immunity. Id. (quoting Stump v. Sparkman, 435 U.S. 349, 357, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331 (1978)). Haeger complains that Judge McLaughlin erred in accepting Sullivan's contention that Haeger had been notified of and arraigned on pending charges. This ruling clearly qualifies as a judicial act within Judge McLaughlin's jurisdiction. Thus, he is entitled to absolute immunity and may not be forced to defend against Haeger's damages claim.

Similarly, prosecutors are entitled to absolute immunity for discretionary acts. Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 995, 47 L.Ed.2d 128 (1976). Defendants Sullivan, Glanville, and Bowden, therefore, are also immune.

Neither judicial nor prosecutorial immunity, however, protects these defendants from Haeger's request for injunctive relief. See, e.g. Pulliam v. Allen, 466 U.S. 522, 541-42, 104 S.Ct. 1970,1981, 80 L.Ed.2d 565 (1984). Haeger asked the court to order (1) feasibility studies regarding use of a microfiche document storage system, (2) submission and implementation of a plan to avoid recurrence of record inconsistencies similar to those about which he complains, and (3) submission and implementation of plans regarding employee training designed to assure future compliance with the law. R1-1 at 33-36; R1-4 at 15-17. Haeger, however, is without standing to seek an injunction preventing speculative future deprivations of his due process rights

or those of the general population. See e.g. City of Los Angeles v. Lyons, 461 U.S. 95, 111, 103 S.Ct. 1660, 1670, 75 L.Ed.2d 675 (1983) (fact that motorist-victim of an allegedly unconstitutional police choke hold might be stopped by police again in the future not sufficient for standing). Accordingly, the district court did not err in dismissing Haeger's claims against Sullivan, Glanville, and McLaughlin.

This leaves only Cheek, Clerk of the DeKalb County Court; DeKalb County; and Teressa Haeger as possible defendants. (All other defendants were mentioned only in the state-law portion of Haeger's complaint). Teressa Haeger, however, was not served with process and therefore is not a party to this lawsuit. Further, although Haeger mentioned Cheek in the federal portion of his complaint, he made no direct allegations against him. See R1-1 at 13-14 (stating that Cheek failed to provide notice due to errors made by Glanville, Sullivan, and McLaughlin); R1-1 at 14 (stating that Glanville and Sullivan concealed the amended allegations from Cheek). Accordingly, Haeger failed to state a claim against Cheek. Finally, Haeger's complaint, because it failed to identify any policy or custom of DeKalb County responsible for the alleged deprivation of his rights, also failed to state a claim against the County. See Monell v. New York City Dep't of Social Services, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed.2d 611 (1978) (permitting § 1983 liability for counties only where the county has an official policy that was the "moving force of the constitutional violation"); City of Canton, Ohio, v. Harris, 489 U.S. 378, 390-01, 109 S.Ct. 1197, 1205-06, 103 L.Ed.2d 412 (1989) (failure to train is equivalent to an official policy only where it reflects deliberate indifference to the rights of others and is closely related to the ultimate injury). Since the district court properly dismissed Haeger's federal claims, its decision declining to exercise supplemental jurisdiction over his state law claims was well within its discretion. See 28 U.S.C. § 1367 (c)(3).

For all of the above stated reasons, we AFFIRM. See Young v. Comm'r of Internal Revenue, 926 F.2d 1083, 1090 (11th Cir. 1991) (we may affirm on any ground, regardless of whether relied upon or even considered by the district court).

AFFIRMED.

APPENDIX B--DISTRICT COURT ORDER
July 3, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN R. HAEGER, JR.	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL NO. 1:96-CV-0214-JEC
	:	
DEBRA SULLIVAN, Assistant DeKalb County Solicitor, URAL D. GLANVILLE, former Assistant DeKalb County Solicitor, RALPH T. BOWDEN, JR., DeKalb County Solicitor, DEKALB COUNTY, GEORGIA, DR. TERESSA F. HAEGER, KENNETH CHEEK, Clerk of DeKalb County State Court, HONORABLE JACK MCLAUGHLIN, DeKalb State Court, JONATHAN WEINTRAUB, DeKalb County Attorney, and MELINDA BRULEY WHILE, Assistant DeKalb County Attorney,	:	
	:	
Defendants	:	

ORDER

This case is before the Court on defendants' Motion to Dismiss [5]. This is plaintiff's second claim in this Court. See Haeger v. Edmond, et al., No.

1:96-CV-0049 (N.D.Ga., Carnes, J.). It appears that plaintiff and his ex-wife have been involved for the last few years in acrimonious disputes concerning their divorce. The first complaint alleged violations of 28 U.S.C. § 1983, as a result of a child support delinquency hearing that plaintiff alleged was wrongfully held. This Court dismissed that claim on May 31, 1996 (order attached). This second claim alleges violations of § 1983 and state law claims for acts occurring in connection with the filing of a criminal trespass charge against plaintiff, which charge was initiated by his ex-wife.[1]

Defendants have moved to dismiss this claim and have filed a thorough and well-reasoned brief in support of that motion. Plaintiff has moved to strike this motion, hut has not otherwise objected substantively or indicated why the motion should not be granted. Because the Court agrees with defendants argument that the claim should be dismissed, for the reasons averred by defendants, the Court GRANTS defendants Motion to Dismiss.

SO ORDERED, this 3 day of July, 1996

_____

JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

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[1] Plaintiff pled guilty to a simple battery charge, and the trespass charge was dismissed.

APPENDIX C--DISTRICT COURT ORDER IN UNRELATED CASE ATTACHED TO ORDER IN INSTANT CASE

THE U. S. DISTRICT COUNT
FOR THE NORTHERN DISTRICT OF GEORGIA

John R. Haeger Plaintiff	:	
v.	:	CIVIL NO.
Ms. Wonda Edmond, in her individual and official capacities; UNIDENTIFIED EMPLOYEES OF THE DEKALB COUNTY ALIMONY AND SUPPORT UNIT, in their individual and official capacities; ASHLEY DUNCAN, in her individual and official capacities; DEKALB COUNTY, GEORGIA; DR. TERESSA F. HAEGER; CAROL WEBB in her individual and official capacities; UNIDENTIFIED EMPLOYEES OF THE CLERK OF THE SUPERIOR COURT OF DEKALB COUNTY, in their individual and official capacities; HONORABLE HILTON FULLER, in his individual capacity; RICHARD JUGAR, in his individual capacity; JOHN WEINTRAUB in his individual and official capacities. Defendants	:	96- CV -0049-JEC

Appendix C

ORDER

This case is presently before the court on defendants' Motions to Dismiss [6,18,23], defendants Motion for Stay of Discovery and for Protective Order [19], plaintiff's Request to Add Defendants [17], plaintiff's combined Motion to Strike, Motion for More Definite Statement, and Motion for Sanction [20], and plaintiff's second Motion to Strike and Motion for More Definite Statement [21]. The Court has reviewed the record and the arguments of the parties and, for reasons set out below, concludes that defendants Fuller, Edmond, Duncan, Jugar, Weintraub, and DeKalb County's Motions to Dismiss should be DENIED AS MOOT, defendants' Motions for Stay of Discovery and Protective Order should be DENIED AS MOOT, Plaintiff's request to Add Defendants should be DENIED, Plaintiff's combined motion to Strike, Motion for More Definite Statement, and Motion for Sanction should be DENIED AS MOOT, and plaintiff's second Motion to Strike and Motion for More Definite Statement should be DENIED AS MOOT. Furthermore, the Court finds that plaintiff's claims against the remaining defendant, Teressa Haeger, who has not yet filed a motion to dismiss, should likewise be DISMISSED.

BACKGROUND

This case primarily involves an effort by the DeKalb County Superior Court to enforce an order entered against plaintiff to pay child support. Plaintiff John Haeger and defendant Teressa Haeger were granted a divorce by the DeKalb Superior Court. On May 14, 1993, plaintiff was ordered to pay child support to his ex-wife through the Alimony and Support Unit of the DeKalb County Superior Court (hereinafter "ASU"). Beginning May 1, 1993. Apparently aware of the monthly amount to be paid before the order was issued, but not the manner in which it should be paid, plaintiff made the first payment of $ 1500.00 directly to defendant Teressa Haeger rather than through the ASU.

Approximately six months later, Defendant Teressa Haeger falsely informed the ASU that plaintiff has failed to pay the child support payment due May 1, 1993 and requested that action be undertaken. Plaintiff subsequently received a "Final Notice" demanding payment of $ 1500.00. Additionally, based upon ASU's records indicating an absence of such payment and pursuant to the authority granted her under O.C.G.A. § 15-15-

4.1, [2] defendant Edmond, as Child Support Receiver, prepared and filed a complaint with the DeKalb County Superior Court to initiate contempt proceedings. That pleading was accepted and filed by the office of the clerk.

The Honorable Hilton Fuller, another defendant named in this action, was the trial judge at the ensuing hearing on 'February 16, 1994. Plaintiff appeared at the hearing regarding the alleged deficiency, accompanied by counsel. Defendant Edmond also appeared, testifying at that hearing as to ASU's method of recording child support payments.

At some point during these proceedings, defendant Edmond received a copy of plaintiff's canceled May 1, 1993 child support check. Defendant Edmond then contacted defendant Teressa Haeger for confirmation. Defendant Haeger confirmed that the payment had indeed been made. Accordingly, Judge Fuller determined that plaintiff was not required to make an additional child support payment. Plaintiff, thus, prevailed at the hearing.

Following the hearing, defendant Edmond presented a proposed Order to Judge Fuller that was signed by him and them stored on the Clerk's microfilm case record system. Later, in response to plaintiff' request to inspect certain documents, defendant Edmond informed him that his request must be directed to defendant
Weintraub, the DeKalb County Attorney. At some later date, defendant Jugar, the Court Administrator for the Fourth Judicial Administrative District of Georgia, permitted plaintiff to inspect the original documents from the ASU and to obtain copies.

Plaintiff then proceeded *pro se* to file a complaint in federal district

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[2] "Whenever any person required to furnish support to a minor by payments through a child support receiver and whenever any such payments are not made in accordance with the judicial order or written agreement, the child support receiver shall be authorized to bring an action for contempt against the person required to make such payment. Any such action shall . . . be brought in the court which ordered the payment of child support." O.C.G.A. § 15-15-4.1

court for the Northern District of Georgia on January 5, 1996.[3] He later amended his complaint on January 19, 1996 to include additional claims. Plaintiff classified his action as a 42 U.S.C. § 1983 civil rights claim. (Pl.'s Answer to Mandatory Interrogs. [2] at 1.) In his amended complaint, plaintiff categorizes his allegations into five general deprivation of due process challenges against various combinations of defendants. (Am. Compl. [4] at ¶¶ 84-91.) Beyond the alleged federal causes of action, plaintiff broadly asserts six supplemental state causes of action, over which he asks the Court to extend supplemental jurisdiction pursuant to 28 U.S.C. § 1367. (Am. Compl. [4] at ¶¶ 2, 92-97.) He seeks money damages and various forms of injunctive relief.

Specifically, plaintiff's due process claims allege: (1) failure to train, (2) capricious use of governmental power, (3) failure to provide a hearing free from impropriety, (4) improper notice, and (5) denial of the "generalized expectation of compliance [by] judicial employees and officers." (*See* Am. Compl. [4] at 15.) The state causes of action alleged are: (1) the unlicensed practice of law, (2) acceptance of pleadings prepared by an unauthorized person, (3) wilfully negligent provision lf computer record keeping services, (4) negligent record keeping, (5) violation of state separation of powers doctrine, and (6) violation of the Georgia Open Records Act.

Defendant Fuller filed a motion to dismiss based upon the contention that the District court lacked subject matter jurisdiction to hear plaintiff's claims. Defendants Edmond, Duncan, Jugar, Reeves, Weintraub, and Dekalb County filed a separate but overlapping motion to dismiss alleging, among other things, the lack of subject matter jurisdiction and the failure to state a claim upon which relief may be granted.

Plaintiff later submitted a Request to Add Defendants on April; 12, 1996. Plaintiff seeks to assert one federal and one state claim against Linda Reeves, Clerk of the Superior Court of Dekalb County, in her individual and official capacities, presumably as the previously unidentified member of that staff. In their Motion to Dismiss, defendants have included Linda Reeves "in the interests of judicial economy." (*See* Defs.' Mot. To Dismiss [18] at 1.)

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[3] The Court recognizes plaintiff's *pro se* status and will afford some latitude to him in construing his pleadings and arguments.

Similarly, Carol Jones, whom plaintiff contends he previously misidentified at Carol Webb, is also named under the exact same claims. While the Honorable Daniel M. Coursey, Jr. Is on the request to add list, it is not clear under which claims plaintiff seeks to sue him. Defendant Coursey filed a Motion to Dismiss [23] that "incorporat[ed] by reference all arguments set forth in defendant Fuller's Motion and Brief previously filed with this [C]ourt." Defendant Teressa Haeger, plaintiff's ex-wife, has not yet moved to dismiss the alleged capricious use of governmental power and improper notice claims under which she is being sued.

DISCUSSION

I. **Motion to Dismiss for Lack of Subject Matter Jurisdiction.** Defendants Fuller, Coursey, Edmond, Duncan, Jugar, Reeves, Weintraub, and Dekalb County have moved to dismiss the pending claims, pursuant to FED. R. CIV. P. 12(b)(1), based on the contention that this Court lacks jurisdiction over the subject matter.[4] The Court finds that it indeed lacks subject matter jurisdiction over plaintiff's claims, and alternatively that plaintiff has failed to state a claim upon which relief may be granted.

It is well settled that "lower federal courts possess no power whatever to sit in direct review of state court decisions." *Atlantic Coast Line R. Co. v. Locomotive Eng'rs*, 398 U.S. 281, 296 (1970). See also, *Rooker v. Fidelity Trust Co.* 263 U.S. 413, 415-16 (1923). (Holding that federal district courts have no jurisdiction to 'entertain a proceeding to reverse or modify the judgment [of a state court] for [constitutional errors]."); *Reynolds v. Georgia*, 640 F. 2d 702,605 (5th Cir. Unit B) (concluding that if review of state court

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[4] The doctrine of judicial immunity from liability for damages under section 1983 is firmly established. Accordingly, the Court concludes that Judge Fuller and Judge Coursey enjoy absolute immunity from an action for damages for acts committed within the scope of their judicial capacity. *Imbler v. Pachtman*, 424 U.S. 409, 419, n. 13 (1976). As to plaintiff's request for injunctive relief, the Court finds, pursuant to Part I of this Order, the Court lacks subject matter jurisdiction over such a claim.

judgment is essentially exercise of appellate jurisdiction, district court has not power to entertain suit), *cert denied*, 454 U.S. 865 (1981); *National Car Loading Corp. v. Shulman*, 570 F. Supp. 3, 3-4 (N.D. Georgia 1983) (Vining, J.) (Dismissing for lack of subject matter section 1983 claim seeking injunctive relief land declaratory judgment that certain lower court ruling denied plaintiff of Fourteenth Amendment rights). Moreover, under the *Rooker-Feldman* doctrine, a federal district court 'may not decide federal issues that are 'inextricably intertwined' with the state court's judgment." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). See also *Staley v. Ledbetter*, 837 F.2d 1016, 1018 (11th Cir. 1988) (holding same); *Blue Cross and Blue Shield of Maryland v. Weiner*, 868 F.2d 1550, 1554 (11th Cir.) (applying doctrine), *cert denied*, 493 U.S. 892 (1989).

Notably, too, the Supreme Court has prohibited district courts from exercising subject matter jurisdiction over challenges to the constitutionality of a state court's action, even when the challenge is anchored to alleged deprivations of federally protected due process [rights." *Feldman*, 460 U.S. at 485 (quoting *Doe v. Pringle*, 550 F.2d 596, 599 (10th Cir. 1976), *cert denied*, 431 U.S. 916 (1977)). This doctrine recognizes that not only are state courts entirely competent to adjudicate federal constitutional claims, but the requirement that such claims be raised in state court affords state courts the opportunity to consider a state statute or rule in light of federal constitutional arguments and possibly offer a saving construction in response to those arguments. *Feldman*, 460 U.S. at 1315, n.16 (citing *Cardinale v. Louisiana*, 394 U.S. 437 438-9 (1969)).

Plaintiff argues that, as the prevailing party, he is not seeking to modify, overturn, or obtain review of the state court proceeding and claims that the jurisdictional basis for and the relief sought under 42 U.S.C. § 1983 also insulates his complaint from the *Rooker-Feldman* doctrine. (Pl.'s Br. In Opp'n to Def.'s Mot. To Dismiss [9] at ¶¶ 1-3.) He fails to address, however, whether the federal claims are inextricably intertwined with the state court proceeding.

To reiterate, the *Rooker-Feldman* doctrine has not been limited to actions expressly seeking direct review of the state court judgment. Rather, 'it [has been extended to actions] in which 'the constitutional claims presented [in federal court] are inextricably intertwined with the state court's grant' or denial of relief." *Hale v. Harney*, 786 F.2d 688, 691 (5th Cir.

1986) (quoting *Feldman*, 460 U.S. at 482 n.16).

A review of the complaint reveals that, aside from any direct review of plaintiff's ultimate victory in the state court action, issues concerning the manner in which the complaint was brought , plaintiff's appearance before the court, and the specific actions of the judge, clerk, and other members of the Dekalb County Superior Court in adjudicating this hearing could not be much more inextricably intertwined with the state court proceeding. Despite plaintiff's attempt to portray his dissatisfaction with being summoned to defend himself in court as a distinct constitutional injury, it is manifest from his complaint that he is seeking essentially an appellate review of issues 'inextricably intertwined' with the state court proceeding.

The Eleventh Circuit has explicitly reaffirmed the validity of the *Rooker-Feldman* doctrine and has reminded the lower federal courts that federal review of state court decisions is entrusted to the Supreme Court. *Wood v. Orange County*, 715 F. 2d 1543, 1546 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984). See also *Buckley Towers Condominium, Inc. v. Buchwald*, 595 F. 2d 253, 254 (5th Cir. 1979) ("Plaintiffs may present their constitutional and any other claims grounded in federal law to the state courts. If these state courts err, plaintiff's remedy is the United States Supreme Court, not in [the] District Court.")[5]

Moreover, another court in this district has determined that subject matter jurisdiction does not exist where a plaintiff brings a Section 1983 claims against the judge, jury and attorneys involved in the state court proceeding, albeit, following an unsuccessful lower court action. Sunn v. Dean, 597 F. Supp. 79 (N.D. Ga 1984)(Forrester, J.).[6] Relying on *Feldman*,

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[5] In *Bonner v. City of Pritchard*, 661 F. 2d 1206, 1209 (11th Cir. 1981) (*en banc*), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit Court of Appeals handed down prior to the close of business on September 30, 1981.

[6] There seems to be no limiting language within the *Rooker-Feldman* doctrine to prohibit the determination that a *successful* plaintiff's claim is "inextricably intertwined"

the court explained that it "has no authority to decide constitutional issues which were raised, *or reasonably could have been raised in the state court proceeding*." *Id.* At 80. (Citing *Feldman*, 460 U.S. at 482, n.16) (emphasis added). Thus the *Rooker-Feldman* doctrine can only apply if the plaintiff had a reasonable opportunity to raise his federal claim in a state proceeding.

For example, in the state court proceeding plaintiff could have challenged the validity of O.C.G.A. § 15-15-4.1, which authorized defendant Edmond to bring an action against plaintiff, as violative of O.C.G.A.§§ 15-19-50, 15-19-51, and 15-19-52, which forbid unauthorized practice of law. Plaintiff, in fact, acknowledges the *Rooker-Feldman* prohibition as to claims "plaintiff could have reasonably presented in state court." (Pl.'s Br. In Opp'n to Def.'s Mot. To Dismiss [9] at 1.). Rather than demonstrating the absence of an opportunity to raise these federal claims alleged in his complaint, plaintiff merely reiterates his contention that he "is not seeking a review of a state court order." (*Id.*)

In the present case, plaintiff calls upon this court to review the actions of the judge and various state employees for error. "Insofar as plaintiff's claims would require this court to reverse, vacate, or otherwise modify the judgment of the state court, . . . *or to review the proceedings in the state court for error*," the district court lacks jurisdiction. *Sunn*, 597 F. Supp. at 80 (emphasis added).[7]

Under certain circumstances, in determining whether a federal claim

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with the state court proceeding to merit dismissal by the district court for lack of subject matter jurisdiction.

[7] Other federal courts, in fact, have applied the *Rooker-Feldman* doctrine to circumstances involving divorce and child support proceedings. Those courts have likewise held "that litigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts case in the form of civil rights suits." Hale v. Harney, 786 F.2d 688, 690-691 (5th Cir. 1986) (citing *Sawyer v. Overtone*, 595 F.2d 252, 252 (5th Cir. 1979) and *Kimball v. The Florida Bar*, 632 F. 2d 1283, 1284 (5th Cir. 1980)

is inextricably intertwined, the Eleventh Circuit has analyzed whether the "claim succeeds only to the extent that the state court wrongly decided the issues before it."[8] *Datz v. Kilgore*, 51 F. 3d 252 (11th Cir. 1995) (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1,24-5 (1987) (Marshall, J. concurring).

Although, unlike the plaintiff in *Datz*, plaintiff prevailed at the state court level, the Court finds enough similarities to warrant application of the doctrine. Essentially, plaintiff's claims would succeed only to the extent that Judge fuller erred in "permitting" defendant Edmond to file a complaint and prepare an order. Accordingly, the Court concludes it lacks subject matter jurisdiction over plaintiff's complaints.

Although defendant Teressa Haeger has not submitted a motion to dismiss, FED. R. CIV. P. 12(h)(3) provides that whenever it appears that the court lacks jurisdiction over the subject matter, the court *shall dismiss* the action. FED.R.CIV.P. 12(h)(3). Another court in this jurisdiction has recognized that the question of subject matter jurisdiction can be raised by any party, or by the court *sua sponte*, at any time. *Preston v. Cigna Property & Cas. Ins. Co.*, 785 F. Supp. 1466 (N.D. Ga. 1992). (O'Kelley, J.))(citing Love v. Turlington, 733 F. 2d 1562, 1564 (11th Cir. 1984)). As to defendant Haeger, therefore, plaintiff's action is hereby dismissed.[9]

As to plaintiff's request to add defendants Jones and Coursey, the Court denies the motion pursuant to its authority under FED.R.CIV.P. 15(a). Rule 15(a) provides that "a party may amend the party's pleading only by leave of the court or by written consent of the adverse party." Because the

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[8] In *Data*, plaintiff was arrested and prosecuted for felony possession of a handgun. Before his criminal trial commenced, Datz sought to initiate a civil suit against the arresting officers under Section 1983. Following the plaintiff's conviction in state court, the district court (this Court) concluded that the *Rooker-Feldman* doctrine barred Data's civil claim and dismissed the claim.

[9] Further, plaintiff failed to allege any set of facts tending to show that his ex-wife was a state actor or conspired with a state actor as required by section 1983.

Court finds that, for reasons stated above, subject matter jurisdiction over these claims does not exist, plaintiff's attempts to add these defendants would be futile and the motion should, therefore, be denied.[10]

II. **Motion to Dismiss for Failure to State a Claim**

The Court finds alternatively that, assuming subject matter jurisdiction did exist, plaintiff has not stated a claim upon which relief may be granted. Defendants Edmond, Duncan, Jugar, Reeves, Weintraub, and Dekalb County have moved to dismiss the pending claims, pursuant to FED.R.CIV.P. 12(b)(6), based on their contention that the plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. § 1983. In determining the merits of a 12(b)(6) motion, the Court must construe all of the factual allegations in the complaint as true. Jackson v. Okaloosa County, Fla., 21 F. 3d 1531, 1534 (11th Cir. 1994). Because it is unclear from the complaint the exact nature of the due process violations, we will treat the complaint as alleging both a procedural and substantive due process violation.

A. **Procedural Due Process**

Section 1983 is not itself a source of substantive rights, but merely provides "a method of vindicating federal rights else where conferred." *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979). In order to prevail on a procedural due process claim, plaintiff must establish: "(1) a constitutionally protected interest in life, liberty, or property; (2) governmental deprivation of

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[10] Moreover, pursuant to FED.R.CIV.P. 12(c), "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Thus, if and when defendants Haeger and Jones filed such a motion, the Court would grant them for the reasons discussed above. Indeed, another court in this district has concluded that a motion to dismiss should not be strickenf on the ground that the motion was filed late where the tardiness did not prejudice the plaintiff. United States v. $633,021.67 in U.S. Currency, 842 F. Supp. 528, 530 (N.D. Ga. 1993) (Hall, J.). The futility of adding these defendants thus becomes even more apparent.

that interest; and (3) the constitutional inadequacy of procedures accompanying that deprivation." *Bank of Jackson County v. Cherry*, 980 F. 2d 1362, 1366 (11th Cir. 1993). See also *Cryder v. Oxendine*, 24 F. 3d 175, 177 (11th Cir. 1994) ("A section 1983 claim alleging a procedural due process clause violation requires proof of three elements: a deprivation of a constitutionally protected liberty or property interest; state action; and constitutionally inadequate process.") Accordingly, the threshold question in conducting the due process analysis is whether plaintiff had a property or liberty interest at all. *Board of Regents v. Roth*, 408 U.S. 564, 569-571 (1972).

Defendants argue that plaintiff does not have a valid due process claim because none of the alleged rights he has asserted are constitutionally protected. (Defs.' Br. In Supp. Of Mot. To Dismiss [18] at 10.) The Court concludes that a generous reading of the plaintiff's complaint indicates that plaintiff is alleging the right to be free from spending "money and resources to defend against a specious. Baseless, and frivolous complaint," a right to the "reasonable legal expectation" that the child support receiver would not prepare and file a complaint if she were not an attorney, and the right to the expectation that he will be protected against litigation aimed at obtaining allegedly delinquent child support payments that were not made as ordered. (See Am. Compl. [4] at ¶¶ 84-91.) The allegation central to all of the alleged rights argues he was denied is that defendant Edmond should not have been allowed to file a complaint against plaintiff.[11]

In order to have a property interest in the aforementioned rights, an individual must have more than a "unilateral expectation" of the benefit -- he must have a "legitimate claim of entitlement" to it. *Roth*, 408 U.S. at 577. It

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[11] Plaintiff relies on O.C.G.A. § 15-19-51 which provides in pertinent part:

> (A) It shall be unlawful for any person other than a duly licensed attorney at law: (1) To practice or appear as an attorney at law for any person other than himself in any court . . . .; (6) To render legal services of any kind in actions or proceedings of any nature.

cannot be seriously argued that there is a *constitutional* right to be free from suit, even where the basis for the suit is erroneous or frivolous. Instead, there are remedies, such as the award of attorney fees, that serve to compensate a prevailing party for his time and trouble in defending against a non-meritorious claim.

In asserting the existence of these alleged constitutional rights, plaintiff mistakingly relies upon O.C.G.A. § 15-19-51. Even if § 15-15-4.1, which authorized defendant Edmond to bring an action against plaintiff, was found to be in conflict with § 15-19-51 or § 15-19-52, which forbids the unauthorized practice of law, plaintiff has no identifiable property interest of which he was deprived. Defendant Edmond's filing, *at most* , would constitute the unauthorized practice of law. If defendant Edmond's conduct possibly amounted to the unauthorized practice of law, this Court would not be the proper forum for such an adjudication. O.C.G.A.§§ 15-19-57, 15-19-58.[12]

Plaintiff has neither attempted to define nor alleged a deprivation of a cognizable liberty interest. Although liberty has been defined with less precision, it broadly encompasses rights such as freedom from bodily restraint, the right to contract, to marry, to establish a home and family, and "'generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.'" *Board of Regents v. Roth*, 408 U.S. at 572, (quoting *Meyer v. Nebraska*, 43 S. Ct. 625, 626 (1923)).

Accordingly, the Court readily concludes that the filing of a complaint by the Child Support Receiver, pursuant to O.C.G.A. § 15-15-4.1, does not deprive plaintiff of a property or liberty interest. The Court holds that plaintiff had no protectable interest in being insulated from having to respond to the complaint prepared by defendant Edmond in accordance with

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[12] "[T]he State Bar of Georgia, the Judicial Council of this state, or any organized bar association of this state are authorized to inquire into and investigate charges of unauthorized practice of law . . .(or) to institute in the proper superior court of this state an action or actions seeking injunctive relief against any person." O.C.G.A. §§ 15-19-57 and 15-19-58.

her duties. The analysis for a deprivation of procedural due process necessarily ends when plaintiff fails to show an underlying constitutional violation.[13]

Furthermore, had plaintiff established the existence of a property or liberty interest, and that he was deprived of it in some way, the accompanying judicial proceeding was not inadequate. He had notice of the hearing and had an opportunity to be heard and to defend himself. Moreover, plaintiff ultimately prevailed. The Court finds that plaintiff's inaction contributed to his own woes. When notified that his payment was to be made through the ASU, he should have informed the ASU that he had already paid the May installment directly to his ex-wife. In addition, he could have pursued the legal argument that § 15-15-4.1 was unconstitutional or that defendant Edmond's filing of a complaint under § 15-15-4.1 constituted unlawful practice of law in state court while accompanied by counsel.

B. Substantive Due Process

Aside from failing to state a claim for a violation of procedural due process rights, plaintiff has also failed to state a claim for a violation of substantive due process rights. When analyzing whether there has been a violation of substantive due process in the context of section 1983:

[f]irst, it must be determined whether there has been a deprivation of a federal constitutionally protected interest, and secondly, whether the deprivation, if any, is the result of an abuse of government power sufficient to raise ordinary tort to the stature of a constitutional violation. *Rymer v. Douglas County*, 764 F. 2d 796, (11th Cir. 1985).[14]

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[13] For example, there is no viable cause of action with respect to a "failure to train" claim under Section 1983 where plaintiff has failed to show a deprivation of a federal right. *Parratt v. Taylor*, 451 U.S. 527, 536-39 (1981).

[14] See also McKinney v. Pate, 20 F. 3d 1550, 1556 (11th Cir. 1994), cert denied, 115 S. Ct. 898 (1995) (noting that substantive due process rights are fundamental rights, created only by the Constitution, and that the due process clause does not permit federal courts to substitute their judgment for the numerous judgment calls made each day by state agencies.

This Court determines that, accepting the plaintiff's allegations as true, the action taken by the defendants was not such an abuse of governmental power so as to rise to the level of a constitutional violation. Accordingly, no substantive due process rights were violated, and no claim has been stated upon which relief may be granted.

III. Supplemental Jurisdiction

Lastly, the Court dismisses plaintiff's "supplemental" state claims without prejudice pursuant to 28 U.S.C. § 1367(c)(3).[15] As the Supreme Court has observed, "a federal court should consider and weigh, in each case, and at every stage of litigation, the value of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice." Carnegie-Mellon Univ. V. Cohill, 484 U.S. 343, 350 (1988) (footnote omitted). See also, Hardy v. Birmingham Bd. Of Educ., 954 F. 2d 1546, 1550 (11th Cir. 1992).

The Court concludes that dismissal is appropriate in this case because all the federal claims have been dismissed. "Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well. United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966) (emphasis added)(footnote omitted).

CONCLUSION

For the foregoing reasons, the Court concludes that defendant' Fuller, Edmond, Duncan, Jugar, Weintraub, and Dekalb County's Motion to Dismiss [6,18] is GRANTED, defendant Coursey's Motion to Dismiss [23] is DENIED AS MOOT, defendants' Edmond, Duncan, Jugar, Reeves,

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[15] This section provides that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if a district court had dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3).

Weintraub, and Dekalb County's Motion for Stay of Discovery and Protective Order [19] is DENIED AS MOOT, plaintiff's combined Motion to Strike, Motion for more Definite Statement, and Motion for Sanction [20] is DENIED AS MOOT, and plaintiff's second Motion to Strike and Motion for More Definite Statement [21] is DENIED AS MOOT. The Court DISMISSES, *sua sponte*, the claims against the remaining defendant, Teressa Haeger, as the court lacks subject matter jurisdiction over the action. Finally, because all of the federal claims have been dismissed, the Court DISMISSES plaintiff's state law claims.

SO ORDERED, this 31 day of May, 1996.

_____

Julie E. Carnes
United States District Judge

APPENDIX D--DISTRICT COURT JUDGMENT
JULY 8, 1996

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

John R. Haeger, Jr.	:	
	:	
Plaintiff	:	
	:	CIVIL ACTION NO.
vs.	:	
	:	1:96-CV-0214-JEC
	:	
Debra Sullivan et al	:	
	:	
Defendants.	:	

JUDGMENT

This action having come before the court, Honorable Julie E. Carnes, United States District Judge, for consideration of defendants motion for dismiss, and the court having granted motion, it is

Ordered and Adjudged that the plaintiff John R. Haeger, Jr., take nothing, that the action be dismissed, and that the defendants Debra Sullivan, Ural D. Glanville, Ralph T. Bowden, Jr., DeKalb County, Georgia, Teressa F. Haeger, Kenneth Cheek, Jack McLaughlin, Jonathan Weintraub, and Melinda Bruley White, recover from the plaintiff the costs of this action.

Dated at Atlanta, Georgia, this 8th day of July, 1996.

Luther D., Thomas, Clerk

BY:_____
Dail S. Howard
Deputy Clerk

Prepared, filed, and Entered
in the Clerk's office
July 8, 1996
Luther D. Thomas, Clerk

By: _____
D. Howard
Deputy Clerk

Appendix E

APPENDIX E--DENIAL OF APPELLATE REHEARING SEPTEMBER 30, 1997

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-8928

John R. Haeger,

Plaintiff-Appellant,

Debra M. SULLIVAN, Assistant DeKalb County Solicitor; URAL D. GLANVILLE, former Assistant DeKalb County Solicitor; RALPH T. BOWDEN, JR., DeKalb County Solicitor; DEKALB COUNTY, GEORGIA; TERESSA F. HAEGER, Dr., et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND SUGGESTIONS(S) OF REHEARING EN BANC (Opinion _____, 11th Cir., 19___, _____ F. 2d _____).

Before HATCHETT, Chief Judge, EDMONDSON, and BIRCH, Circuit Judges.

Appendix E

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

APPENDIX F--DISTRICT COURT ORDER REFERENCING ORDER IN THIS CASE
September 10, 1997
(In a subsequent suit involving different DeKalb County actors but involving systematic deprivations of notice, hearing, and equal protection of the law)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN R. HAEGER, JR.,
Plaintiff

v. NO. 1:97-CV-1862-JEC

MS. WONDA EDMOND, Child Support Receiver of DeKalb County, et al,
Defendants

ORDER

This case is before the Court on defendants' Motion To Dismiss [3]. This is plaintiff's third complaint before this Court. In all three complaints, he has alleged a variety of claims that express his displeasure with the ramifications of divorce and child support litigation that occurred in DeKalb County several years ago. On May 31, 1996, this Court issued a 22 page order dismissing plaintiff's complaint. *Haeger v. Edmond, et al.*, 1:96-CV-0049 JEC. The short reason for the Court's dismissal was its lack of jurisdiction, as a federal court, to review state divorce litigation decision. Thereafter, on July 3, 1996, in *Haeger v. Sullivan, et al.*, 1:96-CV-214 JEC, this Court likewise, dismissed a similar complaint, for the same reasons.

Now, plaintiff has filed a third complaint arising out of the same core facts. For the reasons well stated in defendant's brief, the Court **DISMISSES** plaintiff's complaint. The court **GRANTS** defendants' request for an award of attorneys' fees, pursuant to 42 U.S.C. § 1988. Not on.ly are plaintiff's claims frivolous, but he has been told so by this Court on two previous occasions. The Court directs defendants to file a memorandum detailing their fees and expenses within thirty (30) days of this Order.

SO ORDERED, this 10 day of September, 1997.

JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

Appendix G

RELEVANT STATUTES, ORDERS, AND ETHICAL STRICTURES INVOLVED

DUE PROCESS OF LAW

14th Amendment, U. S. Constitution, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U. S. CONSTITUTIONAL REQUIREMENT NOTICE OF CHARGES

6th Amendment, U. S. Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

GEORGIA STATUTORY REQUIREMENT NOTICE TO DEFENDANT OF AMENDED ACCUSATION

O.C.G.A. § 17-7-71. **Trials of misdemeanors; trial of misdemeanor motor vehicle violations; form and contents of accusations; amendment of accusation; service of amendment upon defendant; continuances.**

§ 17-7-71(f) Prior to trial, the prosecuting attorney may amend the accusation to allege or to change the allegations regarding any offense arising out of the same conduct of the defendant which gave rise to any offense alleged or attempted to be alleged in the original accusation. A copy of any

such amendment shall be served upon the defendant or his counsel and the original filed with the clerk of the court. On motion, the court shall grant the defendant a continuance which is reasonably necessitated by an amendment.

STATE BAR OF GEORGIA
PROFESSIONAL STANDARDS

Standard 4. A lawyer shall not engage in professional conduct involving dishonesty, fraud, deceit, or wilful misrepresentation. A violation of this standard may be punished by disbarment.

Standard 45. In his representation of a client, a lawyer shall not:
(b) knowingly make a false statement of law or fact;

Standard 46. In his representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal. A violation of this standard may be punished by a public reprimand.

GEORGIA OPEN RECORDS ACT

O.C.G.A § 50-18-70 (a) and (b) -- **Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access.**
(a) As used in this article, the term "public record" shall mean all documents papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. "Public records" shall also mean any such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure. Provided, further, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. As used in this article, the term "agency" or "public agency" or "public office" shall have the same meaning and application as provided for in the definition of the term "agency" in paragraph (1) of subsection (a) of

Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, ro school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.

All public records of an agency as defined in subsection (a), except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.